Supreme Court, U.S.
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No. 04 445

In The Supreme Court of the United States

VELUPILLAI ANANDANADESAN;
MABLE ANANDANADESAN;
RATHI ANANDANADESAN;
ANANTHI ANANDANADESAN,

Petitioners,

v.

JOHN ASHCROFT,
ATTORNEY GENERAL OF THE UNITED STATES,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether imputed political opinion is a protected ground that satisfies the nexus requirement in the refugee definition?

Whether the exact motivation of the persecutor, rather than the mixed motives of the persecutor satisfies the nexus requirement in the refugee definition?

STATEMENT PURSUANT TO RULE 29.6

Petitioners do not own any share in any publicly held company.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The Immigration Judge's opinion denying petitioners' claim for asylum, withholding of removal to Sri Lanka and protection under the Convention Against Torture. The Board of Immigration Appeal's decision summarily affirming the Immigration Judge's decision without opinion. United States Court of Appeals for the Eighth Circuit's opinion denying the Petition for Review. Amended opinion of the United States Court of Appeal for the Eighth Circuit following the Petition for Rehearing and suggestion for *En Banc* hearing.

STATEMENT OF JURISDICTION

The Court of Appeals entered its amended opinion and order on June 8th 2004, after granting Petition for Rehearing and denying Petition for Rehearing *En Banc,* denied the Petition. Petitioners invoke this Court's jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The provision of the Immigration and Nationality Act §101 (a)(42)(A), 8 USC § 1101 (a)(42)(A), relevant to this petition is reprinted in the Appendix.

STATEMENT OF THE CASE

The lead petitioner, Veluppillai Anandanadesan, his wife Mabl Anandanadesan and their two daughters Rathai and Ananthi Anandanadesan are natives and citizens of Sri Lanka. The respondent is John Ashcroft, the Attorney General of the United States who is entrusted with the implementation of the Immigration and Nationality Act.

The petitioners entered the United States in 1993 as nonimmigrant exchanged visitor. Subsequently the Petitioners applied for political asylum, withholding of removal to Sri Lanka and protection under the Convention Against Torture. On July 27th 2001, the Immigration Judge denied the relieves sought by the petitioners. The Immigration Judge reasoned, among others, the lead petitioner failed to establish past persecution or a well founded fear of future persecution based on political views, religion or membership in the Tamil ethnic group. The petitioners filed a timely appeal to the Board of Immigration Appeals. On November 27th 2002, the Board of Immigration Appeals affirmed the results of the Immigration Judge's decision without opinion. The petitioners filed a Petition for Review with the United States Court of Appeals for the Eighth Circuit which

denied the Petition on March 29th 2004. The U.S. Court of Appeals for the Eighth Circuit sustained the Immigration Judge's finding that the lead petitioner failed to establish past persecution or well founded fear of future persecution based on protected grounds. On May 11th 2004, the petitioners filed a Petition for Rehearing and a suggestion for *En Banc* hearing. The petitioners argued that the Court erred in failing to consider imputed political opinion as a protected ground for political asylum; the Court erred in dismissing the Petitioner's claim that he had a well-founded fear of future persecution; and the Court erred in failing to adjudicate the eligibility for protection under the Convention Against Torture under the Foreign Affairs Reform and Restoration Act of 1998 (FARRA); 8 C.F.R. Section 208.16(c)(2) (2000) as separate and distinct from the adjudication of eligibility for political asylum and withholding of removal under the Immigration and Nationality Act (INA) 8 U.S.C. 1101(a)(42)); 8 U.S.C. 1231(b)(3)(A). On June 8th 2004, the Court granted the Petition for Rehearing with respect to the Torture Convention issue and denied rehearing with respect to the other two issues and also denied the Petition for Rehearing *En Banc*.

This petition for a writ of certiorari followed.

REASON FOR GRANTING THE WRIT

The Eighth Circuit decision conflicts with other Circuits in two major ways. First, it required exact motivation of the persecutor as opposed to the mixed motives of the persecutor upheld in other Circuits to

satisfy the nexus requirement in the refugee definition. Secondly, it failed to consider imputed political opinion as a valid ground to satisfy the nexus requirement in the refugee definition upheld by other Circuits as a protected ground that satisfies the nexus requirement for asylum and withholding of removal.

ARGUMENT

The Eighth Circuit in its opinion stated:

> A reasonable factfinder could agree with the IJ that the third arrest, although it involved beatings and repeated questioning, did not constitute past persecution. Anandanadesan was not a member of the Liberation Tigers of Tamil Eelam (LTTE); rather, the arresters were seeking information from Anandanadesan about certain LTTE members, and Anandanadesan was released without serious injury after a bribe. A month later, he was able to obtain a passport, and thereafter to renew it. See Ghasemimehr v. INS, 7 F.3d 1389, 1390-91 (8th Cir. 1993) (per curiam) (where petitioner did not assert police singled him out for search because of his political views, he failed to show past political persecution).

THE EIGHTH CIRCUIT REQUIREMENT OF EXACT MOTIVATION OF THE PERSECUTOR TO SATISFY THE NEXUS REQUIREMENT IS IN CONFLICT WITH THE DECISIONS OF THE OTHER CIRCUITS.

A refugee, as defined by the INA, is:

> any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, the country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.
>
> INA §101 (a)(42)(A), 8 USC § 1101 (a)(42)(A)

An Asylum applicant must establish that the persecution he/she suffered or fears is on account of his/her race or religion or nationality or political opinion or membership in a particular social group[1]. The Standard English meaning of "on account of" is "because of". According to Grah-Madsan, a leading commentator, that persecutory acts are only pertinent

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[1] The Protected grounds may overlap in some cases. Paragraph 66 of the Hand Book on Procedures and Criteria for Determining Refugee Status - by - Office of the United Nations High Commission for Refugees.

if they are carried out "because of" one of the grounds[2]. There must be a causal link between the harm or fear of harm and the protected grounds.

With respect to the causal link analogy can be drawn in Tort Law. In Torts the usual test for causation is the "but for" test[3]. In Tort law there can be two or more "but for" causes for a same consequence. Similarly in Asylum Jurisprudence also courts have held that there can be and often two or more "but for" causes exist. Osorio v. INS, 18 F.3d 1017, 1028 (2nd Cir. 1994) ("The plain meaning of the phrase "persecution on account of" victim's political opinion does not mean persecution solely on account of political opinion"); Singh v. Ilchert, 63 F.3d 1501 (9th Cir. 1995).

In Matter of S.P., Int. Dec. 3287 (BIA 1996), a seminal case involving a young Tamil from Sri Lanka the Board of Immigration Appeals (BIA) said that an Asylum applicant need not establish the exact motivation of a persecutor where different grounds for the persecutors actions are possible; but must produce evidence from which it is reasonable to believe that the harm was motivated, "at least in part", by an actual or imputed protected ground. Matter of H, Int. Dec. 3276 (BIA 1996); Matter of Kasinga, Int. Dec. 3278 (BIA 1996) [because female genital mutilation is practiced at least in some significant part "to overcome sexual characteristics", it is "on account of".]

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2 Law of Asylum in the United States (3rd Edition, 1999) by Deborah E. Anker, pg 268.

3 Immigration and Refugee Law and Policy (Second Edition 1997) by Stephen H. Legomsky,. pg 845

Among the elements to be considered in identifying motive are the following: indication that the abuse was directed toward modifying or punishing opinion rather than conduct; treatment of others in similar circumstances; conformity to criminal or military law procedures; the extent to which anti-terrorism laws are defined and applied to suppress political opinions as well as illegal conduct; and the extent to which suspected political opponents are subjected to arbitrary arrest, detention and abuse. The above are not an exhaustive list of factors but are mere indicators of some of the factors to be considered in the totality of the circumstances. Matter of S.P., Int. Dec. 3287 (BIA 1996) ; Singh v. Ilchert, 63 F.3d 1501 (9th Cir 1995) .

In the instant case, the Eighth Circuit did not adopt the "at least in part" test but rather required the exact motivation of the persecutor. Thus the Eight Circuit's decision is in conflict with the other Circuits.

In the instant case, the 8th Circuit held that "the arrest" were seeking information from Anandanadesan about certain LTTE members". As the 9th Circuit observed in the Singh v. Ilchert 63 F.3d 1501 (9th Cir. 1995) , that the BIA's conclusion that the Police abuse was motivated by a desire to extract information about the anti-government militants it could not have been politically motivated is based on "faulty legal analysis". The 9th Circuit further said that the Police may have been motivated, in part, by a desire to extract information, this does not preclude a finding of persecution on account of imputed political opinion. The possibility that the arrest, detention, and beating

were motivated by investigation does not foreclose the possibility that it was based "at least in part" on a protected ground, namely, supporter of the LTTE.

THE EIGHTH CIRCUIT'S ANALYSIS OF "POLITICAL OPINION" DEVOID OF IMPUTED POLITICAL OPINION CONFLICTS WITH THE DECISIONS OF THE OTHER CIRCUITS

The political opinion mentioned in the INA §101 (a)(42)(A), 8 USC § 1101 (a)(42)(A) encompass express political opinion as well as imputed political opinion. For an imputed political opinion, the applicant's political views or neutrality are irrelevant. The doctrine of the imputed political opinion focus on the perception of the victim by the persecutor.

As the 9th Circuit said in Hernandez-Ortiz v. INS, 777 F.2d 509, 516 (9th Cir. 1985) individual's actual political view whether neutral or partisan irrelevant where government attributes certain political opinion to him, this constitutes persecution on account of imputed political opinion. As the INS office of General Council's legal opinion stated persecution inflicted on an applicant because the persecutor erroneously attributes to the applicant on of the five protected grounds in the refugee definition can constitute persecution on account of that characteristic[4]. Moreover, as the INS Asylum Officer Basic Training

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[4] Rees, Grover Joseph III. INS Office of General Counsel. Legal Opinion: Continued Viability of the Doctrine of Imputed Political Opinion Memorandum to Jan Ting, Acting Director, Officer of International Affairs (Washington DC: 19 January 1993), 12p

Course[5] manual states that the determinative factor in establishing a nexus between the harm and the protected ground is the Persecutor's perception of the applicant. If the persecutor **thinks** the person is guilty of a political opinion then the person at risk - Laza - Majano v. INS 813 F.2d 1432, 1434 (9th Cir. 1987); Maldonadocruz v. INS 883 F.2d 788, 791 (9th Cir. 1989) (alien fears persecution on account of political opinion because El Salvadorian government views him as associated with guerrillas).

As stated by Deborah E. Anker in *Law of Asylum in the United States,* "Commentators on the UN Refugee Convention have recognized the legitimacy of claims based on imputed political opinion, as has the UNHCR. The doctrine is now well-established in the federal courts and has been accepted by the BIA and by the INS".

In INS v. Elias-Zacarias, 502 U.S. 478, 481, 112 S.Ct. 812, 815, 117 L.Ed 2d 38 (1992) the Supreme Court addressed the issue only tangentially. The Court left open the possibility that an applicant could successfully establish eligibility for asylum based on the persecutor's erroneous believe about the victim's political opinion.[6]

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[5] Asylum Officer Basic Training Course - United States Department of Justice, U.S. Immigration and Naturalization Service, Immigration Officer Academy (August 1998) 8p.

[6] 502 US 478 (1992). The Court mentioned the theory without either endorsing it or rejecting it. "Nor is there any indication (assuming, *arguendo,* it would suffice) that the guerrillas erroneously *believed* that Elias-Zacarias' refusal was politically based." Id. at 482.

Following Elias-Zacarias decision the Board of Immigration Appeals in matter of Matter of S.P., Int. Dec. 3287 (BIA 1996) , a seminal case involving mixed motives the Board granted asylum on accounte of imputed political opinion. Following Elias-Zacarias Circuit Courts have granted asylum on account of imputed political opinion. Canas-Segovia v. INS, 970 F.2d 599 (9th Cir. 1992) (Canas II); Novoa-Umania v. INS, 896 F.2d 1, 3 (1st Cir. 1990) [finding that neutrality could constitute a cognizable political opinion if the applicant demonstrates *inter alia* that "one or more ... groups intend to persecute him because each (incorrectly) think he holds the political views of the other side"]; Al-Harbi v. INS, 242 F.3d 882 (9th Cir. 2001) [Whether Iraqi applicant's past persecution claim was denied because his testimony was found to lack credibility, the court determined he had a well founded fear of future persecution because the Iraqi government would treat him as a traitor in light of U.S. action airlifting him and other out of Iraq to save them because of opposition to Hussein's regime]; Lewin v. INS, 144 F.3d 505, 509 (7th Cir. 1998) [Recognizing imputed political opinion but finding no proof in Burmese citizen's case]; Al Najjar v. Ashcroft, 257 F.3d 1262, 1289 (11th Cir. 2001) [Recognizing imputed political opinion but denying it on grounds that they failed to show that persecution would be because of it].

The 8th Circuit in its opinion held since Anandanadesan was not a member of the Liberation Tigers of Tamil Eelam (LTTE), a reasonable fact finder could agree with the Immigration Judge that the arrest and beating do not constitute past persecution. As the 8th Circuit's analysis show, it clearly ignored the

doctrine of imputed political opinion, a protected ground in its analysis.

In the instant case, the 8th Circuit solely relied on its 1993 opinion Ghasemimehr v. INS, 7 F.3d 1389, 1390-91 (8th Cir. 1993) to support its holding that the petitioner was not subjected to past persecution on account of political opinion. As demonstrated earlier, the Board of Immigration Appeals, the body entrusted with the task of interpreting the statute has clearly spoken on this issue. So do other Circuits. Much water has flown under the bridge since 1993.

Courts have held that when a Government harasses someone without undertaking "any formal prosecutorial measures" it engages in persecution and not legitimate prosecution. Hernandez-Ortiz v. INS, 777 F.2d 509 (9th Cir. 1985) (if there is no evidence of a legitimate prosecutorial purpose for Government's harassment of a person ... there arises a presumption that the motive for harassment is political); Ramirez-Rivas v. INS, 899 F.2d 864, 867-868 (9th Cir. 1990).

In the instant case also, there was no formal persecution mounted against the lead petitioner. He secured his freedom through a bribe - an extra judicial means - imputed political opinion.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 02-4116

Velupillai Anandanadesan; Mable Anandanadesan; Rathai Anandanadesan; Ananthi Anandanadesan,

Petitioners,

v.

John Ashcroft,

Respondent.

Petition for Review of an Order of the Board of Immigration Appeals.

[UNPUBLISHED]

Submitted: March 5, 2004
Filed: March 29, 2004
Amended: June 8, 2004

[ENTERED: JUNE 8, 2004]

Before MELLOY, HANSEN, and COLLOTON, Circuit Judges.

PER CURIAM.

Velupillai Anandanadesan, a Sri Lankan citizen, and his wife and children, who are citizens of the United Kingdom (UK), seek review of an order of the Board of Immigration Appeals (BIA) affirming an Immigration Judge's (IJ's) denial of their applications for asylum, withholding of removal, and relief under the Convention Against Torture (CAT). After careful review of the record, we deny the petition because the IJ's factual findings are supported by substantial evidence in the record as a whole, and the evidence is "such that it would be possible for a reasonable factfinder to reach the same conclusions" as the IJ. See Menendez-Donis v. Ashcroft, 360 F.3d 915, 919 (8th Cir. 2004).

We need not address the IJ's determination that Anandanadesan had firmly resettled in the UK -- and thus was barred from applying for asylum -- because we sustain the IJ's alternative finding that Anandanadesan failed to establish past persecution or a well-founded fear of future persecution based on political views, religion, or membership in the Tamil ethnic group. Although the evidence revealed that Anandanadesan was arrested three times before leaving Sri Lanka in July 1980, the arrests were several years apart, and two of the arrests were brief and resulted in no injuries. See Regalado-Garcia v. INS, 305 F.3d 784, 787-88 (8th Cir. 2002). A reasonable factfinder could agree with the IJ that the third arrest, although it involved beatings and repeated questioning, did not constitute past persecution. Anandanadesan was not a member of the Liberation Tigers of Tamil Ealam (LTTE); rather, the arresters were seeking information from Anandanadesan about certain LTTE members,

and Anandanadesan was released without serious injury after a bribe. A month later, he was able to obtain a passport, and thereafter to renew it. See Ghasemimehr v. INS, 7 F.3d 1389, 1390-91 (8th Cir. 1993) (per curiam) (where petitioner did not assert police singled him out for search because of his political views, he failed to show past political persecution). Although Anandanadesan received numerous phone calls while in the UK, they involved unfulfilled threats and stopped when he left the UK in 1990. See Lim v. INS, 224 F.3d 929, 936 (9th Cir. 2000) (unfulfilled threats alone do not constitute past persecution unless they are so menacing as to cause significant actual suffering or harm). As to Anandanadesan's fear of future persecution, the reasons he gave for having such a fear were either speculative, based on dated events in the face of changed circumstances, or were not based on evidence of a particularized fear or situation posing danger different than that faced by other Sri Lankans. See Safaie v. INS, 25 F.3d 636, 640-41 (8th Cir. 1994).

Because we find that the IJ's decision on asylum should be upheld, the request for withholding of removal, which was based on the same evidence as the asylum claim, necessary fails as well. See Francois v. INS, 283 F.3d 926, 932-33 (8th Cir. 2002). We reject petitioners' claim based on the Convention Against Torture, because we conclude that the evidence did not compel a finding by the IJ that petitioners more likely than not would be subject to torture upon return to Sri Lanka. See Habtemicael v. Ashcroft, 360 F.3d 820, 824, 827 (8th Cir.2004) (standards of proof and review). Finally, we reject petitioners' challenges to the BIA's

streamlined procedures. See Loulou v. Ashcroft, 354 F.3d 706, 708-09 (8th Cir. 2003).

Accordingly, we deny the petition.

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 02-4116

Velupillai Anandanadesan; Mable Anandanadesan; Rathai Anandanadesan; Ananthi Anandanadesan,

Petitioners,

v.

John Ashcroft,

Respondent.

Petition for Review of an Order of the
Board of Immigration Appeals

[UNPUBLISHED]

Submitted: March 5, 2004
Filed: March 29, 2004

[ENTERED: MARCH 29, 2004]

Before MELLOY, HANSEN, and COLLOTON, Circuit Judges.

PER CURIAM.

Velupillai Anandanadesan, a Sri Lankan citizen, and his wife and children, who are citizens of the United Kingdom (UK), seek review of an order of the Board of Immigration Appeals (BIA) affirming an Immigration Judge's (IJ's) denial of their applications for asylum, withholding of removal, and relief under the Convention Against Torture (CAT). After careful review of the record, we deny the petition because the IJ's factual findings are supported by substantial evidence in the record as a whole, and the evidence is "such that it would be possible for a reasonable fact-finder to reach the same conclusions" as the IJ. See Menendez-Donis v. Ashcroft, No. 02-3692, 2004 WL 307451, at *3 (8th Cir. Feb. 19, 2004).

We need not address the IJ's determination that Anandanadesan had firmly resettled in the UK -- and thus was barred from applying for asylum -- because we sustain the IJ's alternative finding that Anandanadesan failed to establish past persecution or a well-founded fear of future persecution based on political views, religion, or membership in the Tamil ethnic group. Although the evidence revealed that Anandanadesan was arrested three times before leaving Sri Lanka in July 1980, the arrests were several years apart, and two of the arrests were brief and resulted in no injuries. See Regalado-Garcia v. INS, 305 F.3d 784, 787-88 (8th Cir. 2002). A reasonable factfinder could agree with the IJ that the third arrest, although it involved beatings and repeated questioning, did not constitute past persecution. Anandanadesan was not a member of the Liberation Tigers of Tamil Ealam (LTTE); rather, the arresters were seeking information from Anandanadesan about certain LTTE members,

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Because we find that the IJ's decision on asylum should be upheld, the requests for withholding of removal and relief under CAT, which were based on the same evidence as the asylum claim, necessary fail as well. See Francois v. INS, 283 F.3d 926, 932-33 (8th Cir. 2002); 8 C.F.R. § 208.16(c)(2) (2003). Finally, we reject petitioners' challenges to the BIA's streamlined procedures. See Loulou v. Ashcroft, 354 F.3d 706, 708-09 (8th Cir. 2003).

Accordingly, we deny the petition.

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A73-166-273 – Kansas City Date: Nov 27 2002

In re: ANANDANADESAN, MABEL

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: McCrummen, Roger K.

[ENTERED: NOVEMBER 27, 2002]

ORDER:

PER CURIAM. The Board affirms, without opinion, the results of the decision below. The decision below is, therefore, the final agency determination. *See* 8 C.F.R. § 3.1(e)(4).

FURTHER ORDER: Pursuant to the Immigration Judge's order and conditioned upon compliance with conditions set forth by the Immigration Judge and the statute, the alien is permitted to voluntarily depart from the United States, without expense to the Government, within 30 days from the date of this order or any extension beyond that time as may be granted by the district director. *See* section 240B(b) of the Immigration and Nationality Act;

8 C.F.R. §§ 240.26(c), (f). IN the event the alien fails to so depart, the alien shall be removed as provided in the Immigration Judge's order.

NOTICE: If the alien fails to depart the United States within the time period specified, or any extension granted by the district director, the alien shall be subject to a civil penalty of not less than $1,000 and nor more than $5,000, and shall be ineligible for a period of 10 years for any further relief under section 240B and sections 240A, 245, 248, and 249 of the Immigration and Nationality Act. *See* section 240B(d) of the Act.

/s/ Edward R. Grant
FOR THE BOARD

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A73-166-274 - Kansas City Date: Nov 27 2002

In re: ANANDANADESAN, RATHAI

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: McCrummen, Roger K.

[ENTERED: NOVEMBER 27, 2002]

ORDER:

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/s/ Edward R. Grant
FOR THE BOARD

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A73-166-275 – Kansas City Date: Nov 27 2002

In re: ANANDANADESAN, ANANTHI

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: McCrummen, Roger K.

[ENTERED: NOVEMBER 27, 2002]

ORDER:

PER CURIAM. The Board affirms, without opinion, the results of the decision below. The decision below is, therefore, the final agency determination. *See* 8 C.F.R. § 3.1(e)(4).

FURTHER ORDER: Pursuant to the Immigration Judge's order and conditioned upon compliance with conditions set forth by the Immigration Judge and the statute, the alien is permitted to voluntarily depart from the United States, without expense to the Government, within 30 days from the date of this order or any extension beyond that time as may be granted by the district director. *See* section 240B(b) of the Immigration and Nationality Act;

8 C.F.R. §§ 240.26(c), (f). IN the event the alien fails to so depart, the alien shall be removed as provided in the Immigration Judge's order.

NOTICE: If the alien fails to depart the United States within the time period specified, or any extension granted by the district director, the alien shall be subject to a civil penalty of not less than $1,000 and nor more than $5,000, and shall be ineligible for a period of 10 years for any further relief under section 240B and sections 240A, 245, 248, and 249 of the Immigration and Nationality Act. *See* section 240B(d) of the Act.

/s/ Edward R. Grant
FOR THE BOARD

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5201 Leesburg Pike, Suite 1300
Falls Church, Virginia 22041

McCrummen, Roger K.
1100 Main Street
Suite 2001
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Office of the District Counsel
55 East Monroe Street
Suite 1700
Chicago, IL 60603

Name: ANANDANADESAN, VELUPPILLAI A70-901-919
Riders: 73-166-273 73-166-274 73-166-275

Date of this notice: 11/27/2002

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

/s/ Jeffrey Fratter
Jeffrey Fratter
Chief Clerk

Enclosure

Board order include A# 73-166-273/ 274/ 275.

Panel Members:
GRANT, EDWARD R.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
CHICAGO, ILLINOIS

File: A70-901-919 A73-166-274
A73-166-273 A73-166-275

Date: July 27, 2001

In the Matters of:

VeluppiUai ANANDANADESAN, et al.

Respondents.

[ENTERED: JULY 27, 2001]

IN REMOVAL PROCEEDINGS

CHARGE: Section 237(a)(l)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(l)(B) — Remained for a period longer than permitted.

APPLICATIONS: Section 208(a) of the Immigration and Nationality Act, 8 U.S.C. § 1158(a) - Asylum.

Section 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1231(b)(3) - Withholding of Removal.

Section 208.16, Chapter 8 of the Code of Federal Regulation -

Withholding of Removal under Article 3 of the Torture Convention.

Section 240B(b) of the Immigration and Nationality Act, 8 "U.S.C. § 1229c(b), Voluntary Departure.

ON BEHALF OF THE RESPONDENTS:
Roger K. McCrummen, Esq.
1100 Main Street, Suite 2001
Kansas City, Missouri 64105

ON BEHALF OF THE SERVICE:
Karl V. Cozad, ASST District Counsel
9747 North Conant Avenue
Kansas City, Missouri 64153

DECISION OF THE IMMIGRATION JUDGE

The lead respondent, Veluppillai Anandanadesan, is a male native and citizen of Sri Lanka. His wife, Mabel Anandanadesan, is a native of Sri Lanka and a citizen of the United Kingdom. Their two daughters, Rathai and Ananthi Anandanadesan, are natives and citizens of the United Kingdom. The lead respondent was admitted to the United States at New York City, New York on February 13.1993, as a nonimmigrant exchange visitor J-1 with authorization to remain in the United States for a temporary period. The lead respondent's wife and their two daughters were admitted to the United States at New York City, New York on July 29, 1993, as nonimmigrant exchange visitors with authorization to remain in the United

States for a temporary period. Because the lead respondent and his family remained longer than permitted, the Immigration and Naturalization Service (hereinafter "Service") initiated removal proceedings against them by filing Notices to Appear (hereinafter "NTAs"), charging that the respondents are removable pursuant to section 237(a)(l)(B) of the Immigration and Nationality Act (hereinafter "Act"). See Exhibits 1A -ID (NTAs of June 7, 1999).

At a master-calender hearing on June 13, 2000, the respondents admitted the factual allegations contained in the NTAs and conceded removability.[1] Thus, the Court finds that removability has been established by clear and convincing evidence as required by the Act. See INA § 240(c)(3)(A) (Supp, V 1999); 8 CF.R.§ 240.8(a) (20011: Cf. Woodbv v. INS. 385 U.S. 276,286 (1966). The lead respondent declined to designate a country of removal. Therefore, pursuant to Section 241(b)(2)(C) of the Act, the Court designated the United Kingdom, the country of which the lead respondent's wife is a citizen, and his two daughters are natives and citizens, or in the alternative Sri Lanka, as the country of which the lead respondent is a native and citizen. The lead respondent's wife and daughters, through their attorney, designated the United Kingdom as the country of removal. The respondents seeks relief in the form of asylum, withholding of removal, withholding of removal under the convention against

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[1] It should be noted that the respondents, through their attorney, admitted the allegations in the NTAs after amendments were made to each respectively.

torture, and in the alternative, voluntary departure. See INA §§ 208(a), 241(b)(3), 8 C.F.R. § 208.16 & 240B(b).[2]

The lead respondent testified at length in support of his applications for relief. In addition to the testimonial evidence, a number of documents were entered into the record as follows: Exhibits 1A-1D. the NTAs; Group Exhibit *6*. Tabs A-1 to A-11, the lead respondent's personal statement, Sri Lanka - 1999 Country Reports on Human Rights Practices (February 25,2000) (hereinafter "Country Report"), and supporting documents submitted by the lead respondent in support of has applications for relief; Group Exhibit 7. Tabs A-12 to A-17, supplemental documentation submitted by the lead respondent in support of his applications for relief. A brief summary of the lead respondent's, testimony is described below as it relates to the specifics of his claim.

LEAD RESPONDENT'S TESTIMONY

The lead respondent is a 53-year old doctor from Sri Lanka and is of Tamil ethnic origin. He attended college and medical school in Sri Lanka. While in medical school, the lead respondent stated that he became a member of the youth wing Tamil United

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[2] The respondents are derivatives of Veluppillai Anandanadesan's applications for relief. See INA § 208(b)(3); 8 C.F.R. § 207.7(a). Consequently, this Court will address the substantive claims made in this case in terms of how they relate to the lead respondent's applications for relief.

Liberation Front (hereinafter "TULF")[3]. According to the lead respondent, his deceased fether was a member of the Federal Parry which later became known as the TULF. He also stated that he was a member of a student organization called "Tamil Manavar Peravai."[4] The lead respondent testified that as a member of the TULF and Tamil Manavar Peravai, he would make and circulate pamphlets concerning the Tamils right to self-determination.

While in medical school, the lead respondent asserted that he met Mr. Kasianandan. The lead respondent claims that Kasianandan was the first member of the TULF and that Kasianandan later joined and became a high member of the Liberation Tigers of Tamil Eelam (hereinafter "LTTE"), an armed insurrectionary group.[5] The LTTE are shortly known as the 'Tamil Tigers." The lead respondent claims to have helped Kasianandan form groups and to have attended meetings with him.[6]

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3 According to the lead respondent, the TULF was a political organization that sought an independent state for the Tamil through non-violence.

4 The lead respondent in asylum application stated that the Tamil Mapavar Peravai staged nonviolent protests against the government.

5 The Department of State describes the LTTE as "an insurgent organization fighting for a separate ethnic Tamil state in the north and east of the country." See Group Exhibit 6 (1999 Country Report at 1). In 1999, the LTTE continued to attack civilians. Id. at 8.

6 The lead respondent did not testify as to the type of groups he had helped form with Kasianandan.

In October of 1971, the lead respondent stated that while at a student protest he was arrested by the Sri Lankan police. He stated that he was held in custody for one day. The lead respondent asserts that while in custody, he was interrogated and beaten. He claims that he was released because his school had intervened to win his release.

In 1977, the lead respondent claims that he was arrested for the second time while at a TULF political demonstration. He testified that he was detained for one day. During his detention, the lead respondent stated that he was interrogated and beaten.

In 1978, the lead respondent began to practice medicine in Colombo, Sri Lanka. In May of 1980, the lead respondent testified that seven men of the Sri Lankan aimed forces came to his home and arrested him. He claims that he was arrested for the third time because he had given medical treatment to a member of the LTTE. The lead respondent was allegedly detained for two weeks during which time he was beaten and questioned about Kasianandan and his brother-in-law.[7] He testified that he was released because his-uncle had bribed an official with 25,000 rupees.

In July of 1980, the lead respondent testified that he realized that his life was in danger so he and his wife left Sri Lanka. The lead respondent had obtained a temporary visa in Sri Lanka which allowed him to travel to the United Kingdom. This temporary

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7 The lead respondent asserts that his brother-in-law is a member of the LTTE.

visa provided the lead respondent with a license to practice socialized medicine in the United Kingdom. He testified that the temporary visa had to be renewed every year for a maximum of five years, and that he renewed his visa for the maximum five years. The lead respondent remained in the United Kingdom for another five years, and since he no longer had a visa, he worked in the private sector.[8]

The lead respondent resided in the United Kingdom for ten years. During these ten years the lead respondent's wife gave birth to their two daughters. In 1991, his wife became a naturalized citizen of the United Kingdom. The lead respondent testified that he did not apply for asylum in the United Kingdom because he "wanted to go back home" and be "involved in Sri Lankan politics."

While in the United Kingdom, the lead respondent testified that he was active in political matters, e.g. he formed the "Tamil Renaissance Organization,"[9] The lead respondent claims to have organized demonstrations at the Sri Lankan Embassy in London, and that he was "very likely" photographed by the embassy officials. He further claims that while he was living in London, that he received many life threatening phone calls from

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[8] The lead respondent did not explain what status, if any, he had during the latter five years in the United Kingdom.

[9] According to the lead respondent, the purpose of the Tamil Renaissance Organization was to inform the world about the human rights violations being committed by the Sri Lankan government.

unknown individuals. In particular, he claims that one caller told him that his name was on "their list," and that if he returned to Sri Lanka that he "will be taught a lesson."

In 1990, the lead respondent testified that he came to the United States to take a foreign medical licensing exam. He stated that he was in the United States for one week, and that lie did not apply for asylum because he already had a job in New Zealand.

From 1990 until 1992, the lead respondent resided, by himself, in New Zealand with a limited license. According to the lead respondent, he did not apply for asylum in New Zealand because he "loved his country", he wanted to return to Sri Lanka and become involved in politics. The lead respondent claims that while he lived in New Zealand he continued his Tamil lobbying activities that included sending several letters to cabinet ministers.[10]

In March of 1992, the lead respondent returned to the United States as an exchange visitor. He had obtained a J-l visa through the University of Connecticut's Residency Program in Psychiatry and Internal Medicine. The lead respondent claims that while in the United States he became a member of the "World Tamil Coordinating Committee." As a member, he claims to have participated in protest marches in New Yorkand to have made public addresses concerning the Tamil struggle for independence.

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10 The lead respondent did not indicate to what government's cabinet ministers he sent letters.

In December of 1993, the lead respondent submitted his application for asylum in the United States. The lead respondent claims that he had two reasons for applying for asylum: (1) because he is afraid that his two daughters will be recruited by the LTTE or that the Sinhalese government would persecute, arrest, or rape them; and (2) because he fears for his life from both the Sri Lankan government and the LTTE.

In regards to the lead respondent's fear, he claims that if returned to Sri Lanka he will be persecuted by the Sri Lankan government because he was involved in the LTTE as a "sympathizer."[11] In his asylum application, the lead respondent claims that he will be forced to take an oath of allegiance against his "political conviction under the Sixth Amendment to the constitution," and that he will be deprived of his "freedom of speech and conscience."[12] Additionally, the lead respondent fears that the LTTE will take him in as a soldier or kill him.

ASYLUM

Under section 208(a) of the Act, the Attorney General may grant asylum to an alien who is physically present in the United States if the alien meets the

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11 It should be noted that the lead respondent did not use an interpreter, and so the term "sympathizer" is his term. Also, he stated that he was never a member of the LTTE.

12 According to the lead respondent, the Sixth Amendment of the Sri Lankan Constitution, prohibits the Tamils right to self determination.

statutory definition of a refugee. A refugee is defined as an individual who is unable or unwilling to return to his or her native country "because of persecution or a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." INA § 101(a)(42)(A).

In order to establish eligibility for asylum, the lead respondent carries the burden of establishing past persecution or a well-founded fear of future persecution. *See* INA § 101(a)(42)(A); 8 C.F.R. § 208.13(a): Matter of S-M-J-21 I&N Dec. 722 (BIA 1997). The statute provides no definition for the phrase "well-founded fear of persecution." Courts have indicated, however, that a respondent can establish a well-founded fear by showing that a reasonable person in his or her circumstances would fear persecution for one of the five grounds specified in the Act. See INS v. Cardoza-Fonseca. 480 U.S. 421 (19871: Matter of Mogharrabi. 19 I&N Dec. 439,400-41 (BIA 1987). Finally, the lead respondent must also demonstrate that he merits such relief as a matter of discretion. See INA § 208(b)(l); Matter of V-T-S-. 21 I&N Dec. 792 (BIA 1997).

FIRM RESETTLEMENT

The Service argues that the lead respondent is ineligible for asylum because he has firmly resettled in the United Kingdom. Under the "doctrine of resettlement," an alien is precluded, and an Immigration Court *must* deny, relief of asylum if the respondent was "firmly resettled in another country prior to arriving in the United States." INA § 208(b)(2)(A)(vi); 8 C.F.R. § 208.13(c). According to the

Code of Federal Regulations, an alien is to be considered "firmly resettled" if prior to arrival to the United States, he entered into another country and received permanent residence status. See 8 C.F.R. § 208.15. This presumption, however, may be rebutted if the alien establishes, *inter alia,* (1) that his entry into that country was a necessary consequence of his flight from persecution, and that he remained in that nation only as long as was necessary to arrange onward travel, and that he did not establish significant ties in that nation; or (2) that the conditions of his residence in that nation were so substantially and consciously restricted by the authority of the country of refuge that he was not in fact resettled. Factors to be considered include the conditions under which other residents of the country live, the type of housing made available to the alien, and the extent to which the alien received permission to hold property and to enjoy other rights and privileges, such as travel documentation including a right of entry and/or reentry, education, public relief, or naturalization, ordinarily available to other residents in the country. See 8 C.F.R.§ 208.15(a); Matter of Soleimani, 20 I&N Dec. 99 (BIA 1989)

Here, the lead respondent's wife became a citizen of the United Kingdom. It is unclear from the testimony whether the lead respondent was himself eligible for United Kingdom citizenship, however; it may be inferred that what was offered to his wife was also available to him. The lead respondent left Sri Lanka and moved to the United Kingdom with his wife, they both lived in the United Kingdom for ten years, and both were the

parents of two daughters possessing United Kingdom citizenship.

Additionally, toe respondent was able to practice medicine during the ten years that he lived in the United Kingdom. The lead respondent testified that he was able to practice socialized medicine with a license he had obtained with a temporary visa. He was able to renew this visa for five-years, the maximum amount allowed. After he could no longer renew the visa, he testified that he was still able to continue practicing medicine in the private sector.

Since the lead respondent bad firmly resettled in the United Kingdom his asylum application must be denied.

PAST PERSECUTION

Even if the lead respondent has not firmly resettled in the United Kingdom, he still has failed to show that he suffered past persecution. An alien may be eligible for asylum based on past persecution. A showing of past persecution creates a presumption that a respondent has a well-founded fear of persecution. See 8 C.F.R. § 208.13(b)(1): Asani v. INS. 154 F.3d 719, 722 (7th Cir. 1998). This presumption, however, can be rebutted by a preponderance of the evidence showing that country conditions have changed to such an extent so as to remove the respondent's well-founded fear of persecution upon return. See id.

Although the statute provides no definition of "persecution," the Court of Appeals for the Seventh Circuit, in a succession of cases, has both described and limited this term. See, e.g.. Mitev v. INS, 67 F.3d 1325, 1330-31 (7th Cir. 1995). Persecution has been described as the "punishment or the infliction of harm for political, religious, or other reasons that this country does not recognize as legitimate." DeSouza v. INS. 999 F.2d 1156, 1158 (7th Cir. 1993). The harm must be particularized to the individual rather than a harm suffered by the general population. See Sivaaialcaran v. INS. 972 F.2d 161, 165 (7th Cir. 1992). At a minimum, persecution includes conduct that threatens a person's life or freedom. See Balazoski v. INS. 932 F.2d 638,642 (7th Cir. 1991).

In the present case, the lead respondent claims that he has experienced persecution by the Sri Lankan government because he is a Tamil. He described three arrests by the Sri Lankan police, two of these arrests had him detained for one day, and the last arrest had him detained for two weeks. While he was detained on all three arrests he was repeatedly interrogated about his contacts with the LTTE, and his relationships with Kasianandan, and his brother-in-law. He testified that he denied being an LTTE member, denied knowing Kasianandan, and denied knowing the location of his brother-in-law. The lead respondent was bit with a wooden pole, hit with a gun, pushed against a wall, and had his hair pulled. He did not suffer from any broken

bones, and he did not seek medical attention for any of these incidents.[13]

The kind of treatment experienced by the lead respondent is insufficient to establish past persecution. The lead respondent may have a subjective fear of being harmed amidst the general civil strife that is present today in Sri Lanka. However, he has failed to show that he was-individually targeted for persecution by the government or someone acting on behalf of the government. None of the abuse that the lead respondent experienced seems specifically aimed at him as an individual. "Conditions of political upheaval which affect the populace is a whole or in large part are generally insufficient to establish eligibility for asylum."" Mitev v. INS. 67 F.3d 1325, 1330 (7th Cir. 1995). Courts have "recognized the hard truth that unpleasant and even dangerous conditions do not necessarily rise to the level of persecution." Id, at 1331.

WELL-FOUNDED FEAR OF PERSECUTION

The lead respondent also seeks to qualify for asylum by showing a well-founded fear of future persecution. To establish that a fear is well-founded, the lead respondent must show that his fear is both subjectively genuine and objectively reasonable. See INS v. Cardoza-Fonseca. 4.80 U.S. at 440; Dobrican v. INS. 77 F.3d 164,167 (7th Cir. 1996) (to establish a well-founded fear, the respondent must demonstrate that the

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13 It should be noted that during his testimony the lead respondent pointed to a scar on his chin alleging that it was a result of one of the beatings.

fear is genuine, and is reasonable in light of the credible evidence); 8 C.F.R. § 208.13(b)(2)(i). While an objectively well-founded fear of persecution may be "grounded in something less than a fifty percent probability of future persecution, the respondent must show "specific, detailed facts supporting the reasonableness of his fear that he will be singled out for persecution." Sofinet, 196 F.3d at 746 (citation omitted).

Here, the lead respondent claims that if he is removed to Sri Lanka, he and his family would be at risk of future persecution, both by the Tamil forces and by the government.[14] As will be shown below, these arguments are without merit.

To begin with, not all persons fleeing conditions of domestic unrest, even on a scale similar to that Sri Lanka, face a well-founded fear of persecution upon return. "Sri Lanka, like so many other countries across the globe, is locked in a seemingly intractable ethnic civil war. But political turmoil alone does not permit the judiciary to stretch the definition of 'refugee' to cover sympathetic, yet statutorily ineligible, asylum applicants." See Sivaainkaran. supra. Also, [c]onsequently, conditions of political upheaval which affect the populace as a whole or in large part are generally insufficient to establish eligibility for asylum." Id.

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[14] The lead respondent claims that the Sri Lankan government will know who he is because his last name is not common, and less than 1% of the Sri Lankans have his name.

Recent evidence about the conditions in Sri Lanka come from the United States State Department. See Group Exhibit 6 (1999 Country Report). For the past 16 years^ the Government has fought the LTTE, an insurgent organization fighting for a separate ethnic Tamil state in the north and east of the country, gee Gramatikov v. INS. 128 F.3d 619,620 (7th Cir. 1997) (holding that a highly credible, independent source of expert knowledge" is necessary to contradict the State Department). The LTTE is a terrorist organization that is trying through armed insurrection to overthrow the government of Sri Lanka. The conflict has claimed over 60,000 lives. In its turn, the Sri Lankan government, a freely-elected democracy, is working to combat this terrorist organization. The government "generally respected" the human rights of the citizens in areas not affected by the insurgency. However, because of the insurgent war, the government has had to impose more stringent checks on travels in some parts of the country.

The lead respondent testified that he has neither participated in any forms of terrorism, nor has he financed any terrorist organizations. He has not knowingly given money for the purchase of arms'. He has not identified himself in anyway as a member of a terrorist group. It is unclear, then, why the government forces would want to come after him. Furthermore, he has not been in Sri Lanka for more than twenty years. The lead respondent has not offered any credible evidence as to why the government forces would focus any more attention, on him than on any other Tamils in the country, especially those Tamils that have little if any connection with organized terrorist groups. See Sivaainkaran supra (upholding BIA's finding that the

respondent, a Sri Lankan national, failed to present specific evidence that his encounters with the government were of such a "magnitude of frequency" that they would cause a reasonable person to fear being singled out for persecution ... and to demonstrate that his fear of persecution pertained to him individually, rather than tot he population generally").

Finally, the lead respondent, along with nearly all of the other Tamils in Sri Lanka, may be subjected to a greater risk of being persecuted because of their minority status. However, "an applicant for asylum must show more than mere membership in a group that, assuming *arguendo,* is subject to some level of persecution... [t]he applicant must also show that ha is more likely than other members of the group to be persecuted." Ahmed v. INS. 163 F.3d 461, 463 (7th Cir. 1999). This, the lead respondent did not prove. The lead respondent claims that ' because he was an LTTE "sympathizer" that the Sri Lankan government will persecute and/or arrest him, but there are numerous Tamils living in Sri Lanka who would favor a separate Tamil state. The lead respondent claims to have participated in political parties, that he raised money for Tamils, but he has never claimed to be a member of tie LTTE. The Sri Lankan government has the right to investigate its citizens when it is trying to protect its territory. As such, this Court finds that he does not have a well-founded fear of future persecution.

WITHHOLDING OF REMOVAL

To be eligible for withholding of removal pursuant to section 241(b)(3) of the Act, the respondent must demonstrate a clear probability of persecution in the country designated for removal on account of race, religion, nationality, membership in a particular social group, or political opinion. See INS v. Stevic, 467 U.S. 407 (1984); Matter of Mogharrabi. 19 I&N Dec. 439 (1987). This means that the lead respondent must establish that it is "more likely than not" that he would be subject to persecution for one or more of the enumerated grounds. See id. The burden of proof required to establish eligibility for withholding of removal is higher than that required for asylum. See Cardoza-Fonseca. supra.

Inasmuch as the lead respondent has failed to establish his eligibility for asylum, he necessarily has failed to meet the more stringent requirement of a clear probability of persecution required for withholding of removal. See Bovkov v. INS. 109 F.3d 413, 418 (7th Cir. 1997). As a result, the lead respondent's application for withholding of removal will also be denied.

WITHHOLDING OF REMOVAL UNDER THE TORTURE CONVENTION

For asylum applications filed on or after April 1, 1997, an applicant shall also be considered for eligibility for Withholding of Removal under the United Nations Convention Against Torture and Other Forms of Cruel, -Inhuman or Degrading Treatment or Punishment

(hereinafter "Torture Convention") if the applicant requests such consideration or if the evidence presented by the alien indicates that the alien may be tortured in the country of removal, See 8 C.F.R. § 208.13(c)(l).

"Torture" is defined as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person." See 8 C.F.R. § 2O8.18(a)(l). The severe pain or suffering must be inflicted on the applicant or a third person for one of four purposes, specifically; (1) to obtain information or a confession; (2) to punish the alien for an act he or she committed or is suspected of having committed; (3) to intimidate or coerce the alien; or (4) for any reason based on discrimination of any kind. See id. In addition, in order to constitute "torture," the "act must be directed against a person in the offender's custody or physical control." 8 C.F.R. § 208.18(a)(6).

An applicant for Withholding of Removal under the Torture Convention bears the burden of proving that it is "more Likely than not" that he or she would be tortured if removed to the proposed country of removal. See 8 C.F.R. § 208.16(c)(2). As with asylum, this burden can be established by testimony without corroboration if the testimony is credible. See id., see also Matter of Y-B-. 21 I&N Dec. 1136 (BIA 1998). In assessing whether the applicant has satisfied the burden of proo£ the Court must consider all evidence relevant to the possibility of future torture, including:

- evidence of past torture inflicted upon the applicant;
- evidence that the applicant could relocate to a part of the country of removal where he or she is not likely to be tortured;
- evidence of gross, flagrant or mass violations of human rights within the country of removal; or
- other relevant information of conditions in. the country of removal.

See 8 C.F.R. § 208.16(c)(3).

As discussed previously above, the lead respondent has failed to establish that it would be "more likely than not" that he would be persecuted if returned to Sri Lanka. Similarly, the lead respondent has failed to show that it would be "more likely than not" that he would be tortured if removed to Sri Lanka. Specifically, the lead respondent has failed to provide any credible evidence of any past torture inflicted upon him; whether he could relocate within the country; or any relevant credible information contradicting the U.S. State Department's assessment-of the current conditions in Sri Lanka. As such, the lead respondent's application for withholding of removal under the convention against torture will be denied.

VOLUNTARY DEPARTURE

Section 240B of the Act permits the Attorney General to grant an alien the privilege of voluntary departure if the respondent can establish that: (1) they have been persons of good moral character during the five year period immediately preceding the application for such relief; (2) they are not removable under section 237(a)(2)(A)(iii) or 237(a)(4)(B) of the Act; (3) they have the means to depart the United States voluntarily and intends to do so; and (4) they merit the relief as a matter of discretion. See INA § 240B(a)(l). The respondents are also required to post a $2,000.00 departure bond ($500,00 each) to insure their compliance. See INA § 240B(b)(3). Since the respondents appear statutorily eligible for voluntary departure, it will be granted as a matter of discretion.

Accordingly, the following Order will be entered:

ORDER OF THE IMMIGRATION JUDGE

IT IS HEREBY ORDERED that the lead respondent's application for asylum and withholding of removal be DENIED.

IT IS FURTHER ORDERED that lead respondent's application for withholding of removal under the Torture Convention be DENIED.

IT IS FURTHER ORDERED that in lieu of an. order of removal, the respondents be granted voluntary departure without expense to the

government on or before September 27,2001, or any extensions as may be granted, by the District Director, Immigration and Naturalization Service, and under whatever conditions the District Director may direct The respondents are also required to post a $2,000.00 departure bond ($500.00 each) with the Service within five business days of the date of this Order to insure their compliance.

IT IS FURTHER ORDERED (hat if the respondents fail to depart as required, or otherwise fail to comply with this Order, the above Order shall be withdrawn without-further notice or proceedings, and the following Order shall thereupon become immediately effective: the respondents shall be removed to the United Kingdom on the charge contained in their respective Notices to Appear.

IT IS FURTHER ORDERED that if the aforementioned country advises the Attorney General that it is unwilling to accept the respondents into its territory, or fails to advise the Attorney General within three months following original inquiry whether it will or will not accept respondents into its territory, the lead respondent shall be removed to Sri Lanka.

/s/ O. John Brahos
O. JOHN BRAHOS
IMMIGRATION JUDGE

8 U.S.C. Chapter 12 Sec 1101

(42) The tern "refugee" means (A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of lace, religion, nationality, membership in a particular social group, or political opinion, or (B) in such special circumstances as the President after appropriate consultation (as defined in section 1157(e) of this title) may specify, any person who is within the country of such person's nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The term "refugee" does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. For purposes of determinations under this chapter, a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of political opinion, and a person who has a well founded fear that he or she will be forced to undergo such a procedure or subject to

persecution for such failure, refusal, or resistance shall be deemed to have a well founded fear of persecution on account of political opinion.